



Prime Minister Ind. P.M.

I will ask the  
Prime Minister to look  
at this on Monday.

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PRIME MINISTER

GREEN PAPER ON TRADE UNION IMMUNITIES

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17/12

I have amended the text of the Green Paper to take account of the points made at the meeting of E on 16 December. The changes are set out in the attached note. So that I can meet the timetable for printing I should be grateful to receive any comments on these amendments by 22 December.

I am sending copies of this minute to members of E Committee, the Lord Chancellor, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

JP  
19 DECEMBER 1980

CHAPTER III A

Para 26: Add at end

"They point out that Britain is unique in the nature and extent of the immunity the law confers on trade unions as such and that trade unions in other countries operate effectively within a framework of law under which they can be sued if their officials or members act unlawfully or in breach of a legally enforceable collective agreement. They argue that if trade unions were prepared to adjust their internal organisation so that they exercised greater control over their members the problems of deciding when a union was vicariously responsible for the acts of its members would be considerably reduced".

Para 34(b): amend to read (additional words underlined)

(b) to what extent would employers in practice make use of the ability to sue trade unions for injunctions and damages in cases of unlawful action.

/And for the same reason, amend the second sentence of para 8 to read:

"This would mean that a trade union itself could be sued for an injunction or damages and its funds would be at risk if the officials ....."\_7

CHAPTER III B

Para 8: Add after third sentence

"The concept of sympathetic action can be distorted and used as a

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pretext for extending a strike or blacking to involve employees and employers who have no interest or connection with the original dispute. Its purpose can become simply to inflict maximum damage and the interests of those not involved in the dispute and the community as a whole can suffer severely."

CHAPTER III D

Delete para 34 and substitute

34. The question is whether the operation of the present definition of trade dispute is satisfactory in relation to international shipping for the reasons set out in paras 31-32 above and whether consideration should be given to making such changes in the law as are needed to protect ships in British ports from industrial action in cases where there is and has been no dispute to which members of the crew are a party. It would of course be necessary to continue to allow lawful industrial action to be taken in furtherance of disputes concerning the dismissal of any members of the crew.

Conclusion

35. The Government would welcome views on the issue discussed in paras 31-34 and the others discussed in this section.

(a) have problems arisen in areas other than those mentioned due to the current definition of "trade dispute"?

(b) are changes needed in the areas discussed in this section or in other areas?

(c) what is likely to be the practical effect of any changes on the immunity for industrial action?

CHAPTER III F

Paras 1 and 2: redraft as follows

1. The practice of holding secret ballots for the election of union officers or to decide whether or not to accept a specific pay offer or to take industrial action is well established in some trade unions. But this practice is still very far from being general and progress in extending it has been slow. The importance of proper democratic procedures for the election - and periodic re-election - of union officials is pointed out in para 20 of Chapter I. Only the adoption of such procedures will enable trade unions to meet the criticism that their leaders are often out of touch with the views of their members and sometimes pursue policies which the majority of their members do not support. The Government has accordingly taken steps through the Employment Act to provide funds for the use of secret ballots in trade union elections and for other purposes (see para 7 below).

2. This section is concerned with the specific issue of secret ballots before industrial action is taken. The increasing damage industrial action can inflict on the community has led to demands that the decision of a trade union to take such action should be reached only after fully consulting the wishes of its members. Too often in recent years it has seemed that employees have been called out on strike by their unions without proper consultation and sometimes against their express wishes. In many cases it has appeared that

employees have had no choice but to obey the union instruction or to face the threat of expulsion from the union. This had led to increasing demands for trade unions to hold secret ballots before a strike is called. A number of proposals have been advanced to ensure that industrial action is called by a trade union only when it demonstrably has the support of the union members concerned in a secret ballot. In particular, it has been proposed that immunity for calling industrial action should be made dependent in certain circumstances on the union having had a ballot of the members to determine whether the majority wish that industrial action to be taken.

#### CAPTER III G

Redraft paras 1-4 as follows:

1. The closed shop is the term customarily applied to an agreement or arrangements which requires employees to join a specified union as a condition of getting or holding a job.
2. The Government's view of the closed shop is clear: it is opposed to the principles underlying it. That people should be required to join a union as a condition of getting or holding a job runs contrary to the general traditions of personal liberty in this country. It is acceptable for a union to seek to increase its membership by voluntary means. What is objectionable, however, is to enforce membership by means of a closed shop as a condition of employment. Closed shops and the practices they can engender damage the image of trade unionism itself. The Government believes that these views are increasingly shared, not least within trade unions themselves.

3. Closed shops are a major feature of British industry, covering about 5 million manual and white-collar workers, and they are found over a wide spectrum of industries in both the private and public sectors. There are many employers as well as trade unionists who hold that they are of importance in helping to create stability in industrial relations. It is argued that the closed shop helps to establish unions as stable and effective organisations representing the workforce as a whole; encourages the responsible co-operation of unions with each other and with management; and helps to ensure that unions have the ability to comply with, and see that their members comply with, agreements they enter into.

4. However, there is little evidence that closed shops have helped to reduce industrial conflict and some closed shops are undoubtedly used as a basis for establishing and maintaining restrictive practices which impede efficiency. The closed shop has been used increasingly as a means of denying business to, and in some cases threatening with extinction, firms whose employees are not members of a union. In some industries it has become common practice for union members working in a closed shop or in a firm where there is a high degree of union membership to refuse to handle goods from non-union sources or to let non-union employees of other companies work alongside them at the same place of work. The purpose of such action may be to compel the employees in non-union firms to become union members or to defend the jobs of union members against what is seen by the unions as a threat from non-union firms. It is arguable, however, that these practices are often more a means of protecting outdated and inefficient methods of working than of defending union members against any more

direct threat to their employment. These arguments are adduced by those who believe that, as a matter of principle, individual employees should have the right to decide for themselves whether or not to join a trade union and that the law should guarantee them this right. They point out that in many other countries the law declares the closed shop illegal or provides employees with a right not to belong to a trade union (see Appendix).

#### CHAPTER V

Para 1: substitute the following:

"The Government believe that improvements in our industrial relations are essential to our economic recovery. Our industrial relations have acted as a barrier to increased productivity and efficiency and have been bedevilled by strikes and other forms of industrial action. As a result they have operated in the interests neither of management nor employees and have clearly damaged the interests of the community at a whole. The question is how far improvements in our industrial relations can be brought about by changes in the law. This Green Paper is intended to provide the basis for a full and informed public debate".

Delete paras 3 and 5 and redraft para 4 to read as follows:

"This Green Paper examines two distinct sets of problems. First, it considers a number of propositions which have been made for changes within our existing legal system. Essentially, what is involved in each case is finding a balance between the

conflicting interests of those directly involved: the interests of employers seeking to manage their businesses effectively and the interests of trade unions carrying out their necessary function or protecting their members; and the interests of those in dispute and of the rest of the community, including employers and their employees whose business and jobs may be threatened. Secondly, the Green Paper considers the problems which derive from the complexity and uncertainty of our present contract and tort-based system of law. It is in the interests of everybody that the law in this area should be as clear as is possible and be seen to be relevant. The basic question here is whether we should break loose from our present system by replacing it with a system based on positive rights".